



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 19 2018

Gary F. Fox II, Treasurer
American for Liberty and Free Enterprise
300 Massachusetts Avenue, NW
Washington, DC 20001

RE: MUR 7119
American for Liberty and Free
Enterprise and Gary F. Fox II in his
official capacity as treasurer

Dear Mr. Fox:

On August 11, 2016, the Federal Election Commission ("Commission") notified Americans for Liberty and Free Enterprise and you in your official capacity as treasurer ("the Committee"), of a complaint alleging that the Committee violated 52 U.S.C. §§ 30104(b), 30116(a)(1), 30118(a), provisions of the Federal Election Campaign Act of 1971, as amended ("Act"). A copy of the complaint was forwarded to the Committee at that time.

Upon review of the allegations contained in the complaint, information provided by the Committee, and publicly available information, the Commission, on March 6, 2018, found that there is reason to believe the Committee violated 52 U.S.C. § 30104(b), and that there is no reason to believe the Committee violated 52 U.S.C. §§ 30116(a)(1), 30118(a). The Factual and Legal Analysis, which provides a basis for the Commission's findings, is enclosed.

The Commission has authorized the Office of the General Counsel ("OGC") to seek additional information regarding the Committee's unreported activity during the period in which it failed to file periodic disclosure reports with the Commission, as required under the Act. You may submit any factual or legal materials that you believe are relevant to this inquiry and the Commission's further consideration of this matter. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

You may consult with an attorney and have an attorney assist you in this matter. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form providing the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

100-447101-100

If you are interested in pursuing pre-probable cause conciliation, you should make such a request in writing to OGC. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, OGC will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents.

Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, OGC ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹ Please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as it is notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1643 or sghosh@fec.gov.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures

Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Americans for Liberty and Free Enterprise
4 and Gary F. Fox II in his official capacity
5 as treasurer
6

MUR 7119

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 ("Commission") by the American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1).
10 Complainant alleges that Americans for Liberty and Free Enterprise and Gary F. Fox II in his
11 official capacity as treasurer ("ALFE"), an independent-expenditure-only political committee,
12 coordinated with and thereby contributed to Donald J. Trump's authorized presidential campaign
13 committee, Donald J. Trump for President, Inc. (the "Trump Committee"), by paying for a
14 campaign rally that featured a purported Trump Committee campaign staffer as a speaker.
15 ALFE denies that the event was coordinated with the Trump Committee and denies that a Trump
16 Committee campaign staffer spoke at the event.

17 The available record provides insufficient factual support for the allegation that ALFE
18 coordinated with the Trump Committee as alleged. Accordingly, the Commission finds no
19 reason to believe that ALFE violated 52 U.S.C. §§ 30116(a)(1), 30118(a) by making coordinated
20 expenditures. However, the Commission finds reason to believe that ALFE violated 52 U.S.C.
21 § 30104(b) by not filing required periodic disclosure reports with the Commission.

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **a. Background**

24 ALFE filed a Statement of Organization with the Commission as an independent-
25 expenditure-only political committee that was dated June 2, 2015, but was received on
26 November 3, 2015. Its treasurer of record is Gary F. Fox II. ALFE has never filed a disclosure

1 report with the Commission since registering as a committee. Donald J. Trump was a 2016
2 candidate for President of the United States. His authorized committee filed a statement of
3 organization with the Commission on June 29, 2015. Its treasurer of record is Timothy Jost.

4 The Complaint, citing local news articles, alleges that ALFE coordinated with and
5 thereby made prohibited in-kind contributions to the Trump Committee by (1) paying expenses
6 resulting from an event held in Loudoun County, Virginia, on July 6, 2016, and (2) featuring a
7 “Trump for President campaign staffer” named “Juli Haller” as a speaker at that event.¹ The
8 Complaint also alleges that ALFE failed to file required disclosure reports with the Commission,
9 including a 2016 Year-End Report and an April 2016 Quarterly Report.²

10 ALFE, through its Executive Vice President, Bryan Crosswhite, provided an email
11 response denying the coordination allegations. ALFE claims that at the event in question, “not
12 \$1 was spent or given to the Trump Campaign” and “Heller [sic] . . . was a volunteer with the Va
13 Trump team at the time and no paid staff were present.”³ The Response also offers that “ALFE
14 was invited to speak” at the event about its “efforts to help inner city people move into business
15 ownership and stimulate the economy.”⁴ ALFE did not address the allegation that it has failed to
16 file required periodic disclosure reports with the Commission.

¹ Compl. at 2, 3 (Aug. 4, 2016) (citing Norman K. Styer, “Trump Supporters Gear Up for Loudoun Campaign,” Loudoun Now (July 7, 2016) <http://loudounnow.com/2016/07/07/trump-supporters-gear-up-loudoun-campaign>; Hannah Dellinger, “Loudoun Republican leaders to host Trump ‘Unity Rally’ in Leesburg,” Loudoun Times-Mirror (July 6, 2016)).

² *Id.* at 3.

³ ALFE Resp. at 1 (Nov. 27, 2016).

⁴ *Id.*

1 **b. Coordinated Expenditures**

2 i. Legal Standard

3 The Federal Election Campaign Act of 1971, as amended (“Act”), provides that a
4 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
5 value made by any person for the purpose of influencing any election for Federal office.”⁵ The
6 Act defines an expenditure as “any purchase, payment, distribution, loan, advance, deposit, or
7 gift of money or anything of value, made by any person for the purpose of influencing any
8 election for Federal office.”⁶ “Anything of value” in either context includes all in-kind
9 contributions.⁷ An expenditure is “coordinated” if it is “made in cooperation, consultation, or
10 concert with, or at the request or suggestion of, a candidate [or] the candidate’s authorized
11 committee.”⁸ Any coordinated expenditure constitutes an in-kind contribution to the federal
12 candidate or committee with whom, or with which, it is coordinated.⁹

13 Independent-expenditure-only political committees are permitted to solicit and raise
14 unlimited contributions, and can receive contributions from corporations and labor unions, *i.e.*,
15 they may solicit and receive funds outside the Act’s limitations and source prohibitions.¹⁰ As

⁵ 52 U.S.C. § 30101(8)(A)(i).

⁶ 52 U.S.C. § 30101(9)(A)(i).

⁷ 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

⁸ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30101(17) (“The term ‘independent expenditure’ means an expenditure . . . (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”).

⁹ 11 C.F.R. § 109.20(b) and 109.21.

¹⁰ *See Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

1 such, however, they may not make any contributions directly to candidates, including in-kind
2 contributions via coordinated expenditures.¹¹

3 ii. The Available Record Does Not Support Reason To Believe that ALFE
4 Coordinated with the Trump Committee

5 Complainant alleges that ALFE coordinated with the Trump Committee when it
6 “sponsored a Trump for President campaign unity rally that included speeches from Juli Haller, a
7 Trump for President campaign staffer.”¹² The available record does not support the allegation
8 that ALFE impermissibly coordinated with the Trump Committee with regard to the event.

9 ALFE maintains that the event was sponsored by ALFE, and not by the Trump
10 Committee.¹³ Indeed, ALFE featured a flier on its website that indicates the event was
11 sponsored by ALFE.¹⁴ One of the news articles cited in the Complaint called the event a “Trump
12 unity rally” but clarified that “[t]he event was organized by [ALFE], a PAC that aims to
13 reconnect the Republican Party to urban voters.”¹⁵ Another article also referred to the event as
14 an ALFE event.¹⁶ The event was held at a restaurant owned by Bryan Crosswhite, the Executive
15 Vice President of ALFE, and ALFE President Kenn Blanchard addressed the gathering via

¹¹ See 52 U.S.C. §§ 30116(a)(1), 30116(f), 30118(a); *Commonsense Ten* at 2-3.

¹² Compl. at 2.

¹³ ALFE Resp. at 1. Another news article’s title described the “unity rally” as an event being hosted by “Loudoun [County] Republican leaders.” Dellinger, *supra*.

¹⁴ “NORTHERN VA UNITE RALLY – WEDNESDAY, JULY 6TH AT 7PM!” <http://www.alfepac.org/2016/06/08/restoring-american-values> (viewed Dec. 5, 2016).

¹⁵ See Styer, *supra*.

¹⁶ See Sydney Kashigawi, “GOP super PAC urges on-the-fence voters to support Trump,” Loudoun Times-Mirror (July 6, 2016), http://www.loudountimes.com/news/article/gop_super_pac_urges_on_the_fence_republicans_to_join_their_cause_support456.

1 FaceTime video.¹⁷ ALFE also denies that any money “was spent or given to the Trump
2 Campaign.”¹⁸

3 Moreover, the available facts show only that a person associated with the Trump
4 Committee, Juli Haller, attended and spoke at an ALFE event, and that does not demonstrate
5 impermissible “coordination” between ALFE and the Trump Committee. An ALFE flier for the
6 event features Haller’s image under “Speakers” with the caption “Juli Haller / Trump 2016.”
7 Various news articles also associated Haller with the campaign, but stopped short of identifying
8 her with any official role or title: one article referred to her as “Trump campaign representative
9 Juli Haller” while the other called her “Juli Haller with the Trump campaign.”¹⁹ However,
10 nothing in the available record establishes that Haller was an agent of the Trump Committee, and
11 Haller’s mere appearance at the event does not constitute “coordination” for the purposes of the
12 Act.²⁰

13 Finally, there is no evidence that the Trump Committee requested or suggested that
14 ALFE sponsor the event, or that ALFE was acting in cooperation, consultation, or concert with
15 the Trump Committee with regard to the event. Therefore, the available record does not support
16 the allegation that ALFE coordinated the event with the Trump Committee. Accordingly, the
17 Commission finds no reason to believe that ALFE violated 52 U.S.C. §§ 30116(a)(1), 30118(a)
18 by making coordinated expenditures.

¹⁷ Styer, *supra*.

¹⁸ ALFE Resp. at 1.

¹⁹ Styer, *supra*; Kashigawi, *supra*.

²⁰ See 11 C.F.R. § 109.20(a).

c. Reporting Violations

Under the Act, political committees must maintain an accurate account of their receipts, disbursements, and cash-on-hand balances, and must accurately report those amounts in periodic public filings with the Commission.²¹

The available record indicates that ALFE has not filed any required disclosure reports since registering as a political committee. Nevertheless, ALFE maintains a website soliciting contributions, and it may be engaged in unreported activity.²² Accordingly, the Commission finds reason to believe that ALFE violated 52 U.S.C. § 30104(b).

²¹ 52 U.S.C. §§ 30102(c), 30104(b); *see* 11 C.F.R. § 104.3.

²² “Americans for Liberty and Free Enterprise,” <https://causes.anedot.com/general-fund-cd96bce0cb814da9773f9> (viewed Dec. 6, 2016).